

Coos County, Oregon

OR-2013-3

Environmental Assessment

For the Approval of a Routine Program Change to Incorporate the Revised Coos County Comprehensive Plan and Coos County Zoning and Land Development Ordinance into the Oregon Coastal Management Program.

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I. Introduction

A. Coastal Zone Management Act

Congress passed the Coastal Zone Management Act (CZMA) in 1972, recognizing the need for a coordinated effort in managing the nation's coastal uses and resources.¹ The Act encourages states to exercise more fully their authorities and responsibilities over coastal resources and uses through the voluntary development of comprehensive coastal management programs (“management programs”) that balance resource protection, use, and development. The primary incentives for states to develop management programs are the receipt of federal funds to develop and implement the programs and the requirement that federal actions must be consistent with the enforceable policies of approved programs (referred to as “federal consistency”).

The Office of Ocean and Coastal Resource Management (OCRM) within the National Oceanic and Atmospheric Administration (NOAA) administers the CZMA and is responsible for approving management programs and changes to those programs.

To receive federal approval, a state coastal management program must satisfy the program approval criteria in 16 U.S.C. § 1455(d) and the requirements in the implementing regulations at 15 C.F.R. part 923, subparts B-F. In general, management programs must address five program areas: 1) uses subject to management, 2) special management areas, 3) boundaries of the state's coastal zone, 4) authorities and organization, and 5) coordination, public involvement and national interest.²

1. Program Changes

The CZMA recognizes that states may need to modify their approved management programs.³ Any change to one of an approved management program's five program areas listed in 15 C.F.R. part 923 is a “program change.” Program changes must be submitted to and approved by OCRM if: 1) the change pertains to an element of the management program upon which the approval findings for the program are based; or 2) the state intends to use the change for federal consistency.⁴ Program changes must be submitted either as a routine program change (RPC) or an amendment.⁵ An RPC is a further detailing of the state management program while an amendment is a substantial change to one of the five program areas.⁶

When reviewing a program change, OCRM first determines whether the change would cause the management program to no longer satisfy the program approval criteria and requirements in 16 U.S.C. § 1455(d) and 15 C.F.R. part 923, subparts B-F. Second, OCRM evaluates whether the change raises other approvability issues such as the enforceability of policies for federal

¹ 16 U.S.C. §§ 1451-1466.

² See 15 C.F.R. part 923, subparts B-F.

³ See 16 U.S.C. § 1455(e).

⁴ NOAA OCRM, *Program Change Guidance: The Coastal Zone Management Act and Changes to State and Territory Coastal Management Programs*, at 2 (July 1996), available at <http://coastalmanagement.noaa.gov/consistency/media/guidanceappendices.pdf>.

⁵ See 15 C.F.R. part 923, subpart H.

⁶ See 15 C.F.R. part 923, subpart H.

consistency review purposes. OCRM must approve the program change, whether an RPC or an amendment, unless the change 1) causes the management program to no longer satisfy the program approval criteria and requirements, or 2) raises other approvability issues.

OCRM's approval or denial of a program change does not affect the implementation or enforceability of the state policies as a matter of state law. Changes to statutes, regulations, and other requirements that are legally binding under state law are effective regardless of whether they are approved by OCRM. OCRM's approval only supplements the state's existing authority by giving the changes effect for federal consistency purposes.

2. Federal Consistency

Federal consistency is a CZMA requirement that federal actions that have reasonably foreseeable effects on any coastal uses or resources be consistent with the enforceable policies of a state's federally-approved management program.⁷ If a state chooses to develop a comprehensive management program that meets the requirements of the CZMA, federal actions are required to be consistent with the policies of the management program.

Although a state may have authority over most activities independent of the federal consistency review process, states ordinarily do not have authority over federal actions except under those circumstances where Congress has acceded to state review. The federal consistency provisions of the CZMA extend the reach of states by giving them the ability to review Federal agency activities, authorizations, and financial assistance that have reasonably foreseeable effects on coastal resources or uses.

Under the requirements of the CZMA, Federal agency activities, such as federal construction projects, must be consistent to the maximum extent practicable with a state's enforceable policies.⁸ Activities that require a federal authorization, such as a license or permit, must be fully consistent with a state's enforceable policies in order for a federal agency to approve the activity.⁹ Federal financial assistance to state and local governments must also be fully consistent with a state's enforceable policies.¹⁰

If a state finds that an activity is not consistent with its federally-approved enforceable policies, the state may object to the activity. In the case of activities that require a federal authorization, such as a license or permit, a state objection means that the federal agency cannot authorize the activity, unless the activity is modified to meet the requirements of the state's enforceable policy, or the state's objection is overridden on appeal to the U.S. Secretary of Commerce.¹¹ One of the limitations on states' federal consistency authority is that state reviews and objections can only be based on federally-approved enforceable policies. Any new or substantially revised enforceable policy must be submitted to and approved by OCRM as a program change before the state can use the policy for CZMA reviews.

⁷ See 16 U.S.C. § 1456; 15 C.F.R. part 930.

⁸ See 16 U.S.C. § 1456 (c)(1).

⁹ See 16 U.S.C. § 1456(c)(3).

¹⁰ See 16 U.S.C. § 1456(d).

¹¹ See 16 U.S.C. § 1456(c)(3).

B. Oregon Coastal Management Program and Coos County Local Coastal Program

In 1977, Oregon became the second state to have a CZMA management program approved. The Oregon Coastal Management Program (OCMP) is administered by the Oregon Department of Land Conservation and Development (DLCD) as part of the overall land use management regime established under the Land Use Act of 1973, as amended. The Act, codified as ORS Chapter 197 *et seq.*, established the Land Conservation and Development Commission (LCDC) with authority to adopt goals and guidelines which local comprehensive plans would be required to meet. The OCMP is the principal mechanism by which the State ensures that local governments, with state oversight, balance conservation and development of coastal and other resources via statewide goals for land use planning. Local governments, such as the Coos County Board of Commissioners, are required to adopt comprehensive land use plans that meet the statewide requirements and to make the day-to-day land use decisions in conformance with state-approved, goal-based plans.

As approved by NOAA in 1977, the OCMP authorities are comprised of:

1. The Statewide Planning Goals adopted by the LCDC;
2. Local comprehensive plans which have been acknowledged by the State as meeting the requirements of the LCDC goals and guidelines, along with the zoning and other development regulations which are in compliance with the acknowledged plans; and
3. Other State-wide statutes and regulations.¹²

The State of Oregon is one of a few states that have federally-approved local coastal programs. The local coastal programs contain enforceable policies which are applied by the State as State enforceable policies for the purposes of CZMA federal consistency reviews. In 1991, OCRM approved for incorporation into the OCMP the Coos County local coastal program, which is comprised of the Coos County Comprehensive Plan (Coos County Plan) and the Coos County Zoning and Land Development Ordinance (Coos County Ordinance).¹³ The incorporation of the Coos County local coastal program into the OCMP was approved as a routine program change pursuant to 15 C.F.R. § 923.84 constituting a further detailing of the OCMP.

The Coos County Plan contains goal statements and plan implementation strategies that are the official policy statements of Coos County with respect to the issue or topic. Goal statements are general in nature, while strategies provide specific guidance to implement the goal. The goal statements are the foundational policies for all subsequent strategies and associated regulations, including land use maps and zoning categories. The issues or topics covered by the goal statements and implementing strategies include: land use and community development; agricultural land; forest land; mineral and aggregate resources; fish and wildlife habitat; historical, cultural and archeological resources, natural areas and wildernesses; dunes, and ocean

¹² Robert W. Knecht, Acting Associate Administrator for Coastal Zone Management, NOAA, Approval of the Oregon Coastal Management Program, at 3 (June 6, 1977).

¹³ See Letter from Timothy Keeney, Director, Office of Ocean and Coastal Resource Management, to Eldon Hout, Coastal Program Manager, Oregon Department of Land Conservation and Development (Jan. 2, 1991).

and coastal lake shorelands; natural hazards; public facilities and services; and urbanization. Also included in the Coos County Plan are estuary management plans for Coos Bay and the Coquille River. The Coos County Ordinance implements the comprehensive plan through detailed zoning ordinances and districts, management uses and objectives, activities and special conditions, and land development standards.

II. Purpose and Need

The purpose of OCRM's action is to fulfill its responsibility under the CZMA to review and respond to Oregon's program change request. OCRM's approval is needed to allow the State to apply the proposed policies when reviewing federal actions for federal consistency review purposes under the CZMA.

As discussed above, the review and approval of proposed program changes is a statutorily required administrative action.¹⁴ In complying with this statutory requirement, OCRM reviews the state program change to ensure that the state continues to meet the eligibility criteria for participation in the CZMA program, and that the program change does not conflict with other federal laws or the national interest. As discussed in the Introduction, OCRM must approve program changes unless: 1) the changes cause the management program to no longer satisfy the program approval criteria and requirements in 16 U.S.C. § 1455(d) and 15 C.F.R. part 923, subparts B-F; or 2) the changes raise other approvability issues. OCRM cannot use the program change review process to change state policy or to challenge state criteria or procedures.

State coastal management programs are intended to be comprehensive land and water use management programs. Because state programs have been found to be comprehensive, once approved, most changes to those programs serve the purpose of providing additional detail and are considered RPCs. Where a proposed program change is found to meet the requirements for RPCs under 15 C.F.R. 923.84, OCRM is required to approve the changes for incorporation into the state coastal management program. If OCRM does not approve or deny a proposed RPC within a certain timeframe, the CZMA provides that the proposed change shall be deemed to have been approved.

In 1996, OCRM revised the program change regulations at 15 C.F.R. part 923, subpart H to require states to identify all enforceable policies proposed in program change approval requests. The intent of this revision to the program change regulations was to establish greater certainty as to the enforceable policies of states.

The 2006 evaluation of the OCMP conducted by OCRM pursuant to CZMA § 312 found that changes to local plans, revisions to state rules, and new polices established at the state level had not been incorporated into the OCMP.¹⁵ The evaluation encouraged the OCMP to prioritize the submittal of enforceable policies that are of particular importance in regards to anticipated activities that the State will be reviewing for federal consistency.

¹⁴ See 16 U.S.C. § 1455(e).

¹⁵ NOAA OCRM, *Final Evaluation Findings: Oregon Coastal Management Program*, at 23 (August 2003 to October 2006).

The Coos County Board of Commissioners has periodically updated the Coos County Plan and Ordinance. On October 21, 2013, OCRM received Oregon's request to incorporate the current versions of the Coos County Plan and Ordinance as an RPC pursuant to 15 C.F.R. § 923.84 and OCRM's 1996 Program Change Guidance.¹⁶ As part of the Coos County RPC submission, DLCD submitted the current version of the Coos County Plan for OCRM's approval. For components of the plan pertaining to Coos Bay (the *Coos Bay Estuary Management Plan*), DLCD submitted just two changes to the plan.¹⁷ DLCD submitted the entire current Coos County Ordinance for incorporation into the OCMP, including all zoning provisions pertaining to the Coos Bay Estuary. The details of the proposed RPC, including changes to the Coos County Plan and Ordinance and identification of enforceable policies, are available on Oregon's Coastal Management Program Website.¹⁸

III. Description of Proposed Action and Alternatives

The proposed federal action is OCRM's approval of the incorporation of changes to the Coos County Plan and Ordinance into the Oregon Coastal Management Program as an RPC pursuant to 15 C.F.R. § 923.84. The proposed action and alternatives considered are discussed below:

Proposed Action: Approve the Coos County Plan and Ordinance Changes as an RPC

OCRM's proposed action is to approve the incorporation of the Coos County changes into the OCMP as an RPC.¹⁹ As a result of OCRM's approval, Oregon would be able to use the revised enforceable policies for CZMA federal consistency reviews for federal actions proposed or filed with an authorizing federal agency after OCRM's approval. The proposed changes are a further

¹⁶ Oregon Coastal Management Program, *Public Notices for Coastal Program Updates* (Oct. 1, 2013), available at http://www.oregon.gov/LCD/OCMP/docs/Public_Notice/CoosCounty_RPC_OCMPNotice.pdf.

¹⁷ The two changes to the Coos Bay Estuary Management Plan included as enforceable policies in the program change submission relate to mitigation sites and agricultural land requirements for rural lands within the coastal shorelands boundary. Specifically, Coos County revised the "Mitigation Sites: Protection Against Pre-emptory Uses" policy to allow wetland restoration research projects in sites previously designated as medium-priority mitigation sites. This issue arose when the South Slough National Estuarine Research Reserve sought county approval for a wetland restoration project that was designated as a medium-priority mitigation site. The second change revises the "Requirements for Rural Lands within the Coastal Shorelands Boundary" policy by specifying that Exclusive Farm Use lands are to be also designated as "Other Aggregate Sites" for purposes of potential review as suitable aggregate resource sites. Aggregate sources are at a premium in Coos County and other coastal locations and lands planned for Exclusive Farm Use, because they are frequently in a flood plain, often are underlain with aggregate resources.

¹⁸ See *Routine Program Change, Seeking to Incorporate the Coos County Comprehensive Plan and Zoning Ordinance Into the Oregon Coastal Management Program* (Oct. 2, 2013), http://www.oregon.gov/LCD/OCMP/docs/Public_Notice/CoosCounty_RPC_Analysis_10.1.13.pdf (last visited Dec. 17, 2013); see also *Coos County Comprehensive Plan*,

http://www.oregon.gov/LCD/OCMP/docs/Public_Notice/Coos_CompPlan_EPs.pdf and *Coos County Zoning and Land Development Ordinance* http://www.oregon.gov/LCD/OCMP/docs/Public_Notice/Coos_Ordinance_EPs.pdf (last visited Dec. 17, 2013). The proposed enforceable policies that have been submitted for OCRM approval are highlighted in the *Coos County Comprehensive Plan* and *Coos County Zoning and Land Development Ordinance*.

¹⁹ Although the proposed action is to approve the proposed program changes, the approval would include standard qualifications and a denial in part for those sections found not to comply with the Coastal Zone Management Program Regulations at 15 C.F.R. part 923 or other limitations under federal law.

detailing²⁰ of the OCMP which is implemented in part through local coastal programs, such as the Coos County local coastal program. The Coos County components of the OCMP were previously approved and implemented as part of the State's management program.²¹

Alternative 1: Deny the Coos County Plan and Ordinance Changes as an RPC and Advise the State to Resubmit the Changes as an Amendment

Pursuant to 15 C.F.R. § 923.84(b)(5)(i), OCRM could deny the Coos County Plan and Ordinance changes as an RPC if they are substantial changes that constitute an amendment under 15 C.F.R. § 923.81. OCRM would advise the State to resubmit the changes as an amendment. As a result of OCRM's denial, the State would not be able to use the Plan and Ordinance for federal consistency reviews until OCRM approves the amendment.

In the interim, the 1985 version of the Coos County Plan and Ordinance (approved by OCRM in 1991 for incorporation into the OCMP) would still have effect under state law for purposes of CZMA federal consistency reviews to the extent that: (1) any provision relied upon as an enforceable policy can be shown to have been previously approved by OCRM; (2) those provisions continue to meet the definition of an enforceable policy; and (3) the provision is enforceable in the most recent State-approved Coos County Plan and Ordinance.

However, if OCRM determined that the changes must be approved through the amendment process, the result would likely be the same as that under the proposed action, i.e., approval (although the timing of OCRM's decision would be different).

Alternative 2: Deny the Coos County Plan and Ordinance Changes

Pursuant to 15 C.F.R. § 923.84(b)(5)(ii), OCRM could deny the proposed changes if program approvability concerns were found. While there may be some subjectivity in determining whether a state coastal management program continues to meet the requirements for program approvability, OCRM has no discretion in denying a proposed change. If a proposed program change would cause a state coastal management program to no longer meet the eligibility requirements for program approval, OCRM must deny the program change. In such a situation, the state would have to address the approvability issues before seeking OCRM's approval of the changes as an RPC or an amendment. Likewise, OCRM has no discretion in approving program changes if there is no basis for denial.

Regardless of whether the program change is approved or denied, the Coos County Plan and Ordinance would still have effect under local and state law. Also, any policy which had

²⁰ RPCs are the further detailing of a state CMP that does not result in a substantial change to one or more of the five program areas identified in subparts B through F of 15 C.F.R. part 923. See 15 C.F.R. § 923.84(a). These program areas include uses subject to the management program, special management areas, coastal zone boundary, authorities and organization of the management program and coordination, public involvement and national interest. A state management program initially approved by NOAA contains a comprehensive suite of components and policies that meet each of these program areas. Given the comprehensive nature of the state management programs, most changes from what was previously approved and what is new is not a substantial change and is a "further detailing" of what was previously approved.

²¹ See 15 C.F.R. § 923.84(a).

previously been approved by OCRM and shown not to have been substantially revised would still be applicable for CZMA federal consistency review purposes.

Alternative 3: No Action

OCRM could take no action to either approve or deny the Coos County Plan and Ordinance changes. Under the CZMA, if OCRM fails to respond to a state's RPC request, the changes are deemed approved.²² Therefore, this alternative would be indistinguishable from approving the changes under the proposed action.

IV. Affected Environment and Environmental Consequences

A. Affected Environment

Landscape and Ecoregion: Coos County is located on the Southern Oregon Coast, encompassing approximately 1,600 square miles. The County runs along the Pacific Ocean and extends from the Lakes of Tenmile to the Cranberry Bogs of Bandon.²³ The terrain along the Pacific Coast and in the river valleys is relatively flat, while the Coast Range, which runs through the majority of the County, is more mountainous. Coos County has a couple of major rivers, including the Coquille River and its tributaries in the south and the Coos River and its tributaries in the north.²⁴ Its proximity to the Pacific Ocean gives Coos County a temperate and humid climate with plentiful rainfall and cooler temperatures. Lower coastal elevations tend to receive less rain than the higher west slopes of the coast mountain range.²⁵

Land Ownership: Coos County is comprised of approximately 610,000 acres of non-federal forest lands, with 16% owned by the County and State, 23% owned by small woodland owners, and 61% owned by wood products corporations. Farms make up about 16% of the total area of Coos County, with an average farm size of 242 acres. Coos County is home to the Bandon Marsh National Wildlife Refuge, the Oregon Islands National Wildlife Refuge, Siskiyou National Forest, Siuslaw National Forest, and the U.S. Coast Guard Charleston Lifeboat Station.²⁶

Developed Lands: About 900,000 acres, 87.4% of the total land area of Coos County, is considered commercial forestland.²⁷ The County's seven incorporated cities – Bandon, Coos Bay, Coquille, Lakeside, Myrtle Point, North Bend, and Powers – are all found along the coast, the Coquille River, or Tenmile Lake. There are approximately 21 unincorporated communities

²² See 16 U.S.C. § 1455(e) and 15 C.F.R. § 923.84(b)(3).

²³ Coos County, Oregon, *Welcome to Coos County!*, www.co.coos.or.us/Home.aspx (last visited Nov. 1, 2013) [hereinafter *Welcome to Coos County*].

²⁴ The Oregon Partnership for Disaster Resilience, *Coos County Multijurisdictional Natural Hazards Mitigation Plan* (May 2013), p. 2-2, available at http://www.co.coos.or.us/Portals/0/Emergency%20Management/Coos%20County%20NHMP_Final_062110.pdf [hereinafter *Coos County Mitigation Plan*].

²⁵ *Coos County Mitigation Plan*, *supra* note 24 at 2-3.

²⁶ Chamber of Commerce, Bay Area, *Serving Coos Bay, North Bend & Charleston, Major Industries*, <http://www.oregonsbayarea.org/business/coos-bay-north-bend-charleston-major-industries.htm> (last visited Nov. 1, 2013).

²⁷ *Coos County Mitigation Plan*, *supra* note 24 at 2-15.

in Coos County that are located outside urban growth boundaries, are primarily residential, and have at least two other commercial, industrial, or public land uses.²⁸

Ecological Conditions: Nationally, Coos County ranks higher than the national average for air quality, water quality, and superfund sites – meaning the area’s ecological conditions are in relatively good shape.²⁹ Several federally listed endangered and threatened species may be found in the county, such as different bird, turtle, and plant species.³⁰

Population: In 2012, the U.S. Census estimated that the Coos County population was 62,534, with an average of 39.5 persons per square mile.³¹ Within Coos County are seven incorporated cities, including Bandon, Coos Bay, Coquille, Lakeside, Myrtle Point, North Bend, and Powers.³²

Economy: The economy of Coos County is currently dominated by forest products, tourism, fishing, and agriculture. Over the past 30 years, Coos County has experienced economic decline with many businesses and employees leaving industry sectors such as commercial fishing, forestry and logging, wood product manufacturing, construction, durable goods wholesalers, warehousing and storage, and water and truck transportation.³³ However, the tourism industry has begun to grow with increases in employment and establishments in lodging, food services, and drinking places.³⁴ Two of the main tourist attractions in the County are the Bandon Dunes Golf Resort and the Coquille Tribes Mill Casino, RV Park and Hotel. Other economic players in Coos County include boating, dairy farming, myrtlewood manufacturing, shipbuilding and repair, and agriculture specialty products such as cranberries.³⁵

Economic Infrastructure: Within the County are two State highways (US 101 and OR 42) and four District highways (OR 42S, OR 240, OR 241, and OR 242). Highway 101 connects the area to Tacoma, Washington to the north and California to the south, providing access for all coastal communities to the rest of the State. Highway 42 runs east to west, connecting Highway 101 and Interstate 5.³⁶ Marine transportation is primarily centered on the Oregon International Port of Coos Bay, the largest deep-draft coastal harbor between San Francisco and the Puget Sound. The Port has a federally-authorized navigation channel, six marine terminals, seven

²⁸ *Id.* at 2-16.

²⁹ Sperling’s Best Places, *Health in Coos County, Oregon*, <http://www.bestplaces.net/health/county/oregon/coos> (last visited Nov. 1, 2013).

³⁰ U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, *Federally Listed, Proposed, Candidate Species and Species of Concern Under the Jurisdiction of the Fish and Wildlife Service Which May Occur Within Coos County, Oregon*, available at

<https://www.fws.gov/oregonfwo/Species/Lists/Documents/County/COOS%20COUNTY.pdf>

³¹ U.S. Dept. of Commerce, Census Bureau, *Coos County, Oregon, Quickfacts from the U.S. Census Bureau*, <http://quickfacts.census.gov/qfd/states/41/41011.html> (last visited Nov. 1, 2013).

³² Wikipedia, *Coos County, Oregon*, http://en.wikipedia.org/wiki/Coos_County,_Oregon (last visited Nov. 1, 2013).

³³ American Institute of Architects, *Sustainable Design Assessment Team (SDAT), Coos County*, at 39 (June 2010), available at http://www.sdcinc.org/AIA_CoosCounty_Final11-18-2010.pdf.pdf [hereinafter *SDAT Coos County*].

³⁴ *SDAT Coos County*, *supra* note 33 at 40.

³⁵ *Welcome to Coos County*, *supra* note 23.

³⁶ *Coos County Mitigation Plan*, *supra* note 24 at 2-11.

deep-draft berths, and barge facilities.³⁷ The Port of Bandon is a smaller port that is more focused on recreational, commercial, and environmental projects.³⁸

There are four small airports in Coos County, including the Southwest Oregon Regional Airport (the largest of the four), which provides regional passenger air services via United Air Express to Portland and San Francisco.³⁹ In 2009, the Oregon International Port of Coos Bay purchased the former Central Oregon & Pacific rail line between Coquille and Eugene.⁴⁰ The Port of Coos Bay has restored freight rail service between Oregon's South Coast and Eugene and reconnected the region to the nation's rail system. As of April 2013, the Coos Bay Rail Link was restored to full service to the 134-mile Coos Bay rail line.⁴¹

Historical and Cultural Resources: Coos County has 50 historic sites listed on the National Register of Historic Places and a number of archaeological sites located within the County. The County was established in 1853 from parts of Umpqua and Jackson Counties and was named after a local Indian tribe, "the Coos." While exploration and trapping in the area began as early as 1828, the first settlement, Empire City, was established in 1853. In the 19th century, people were drawn to the area for gold mining and mineral resource exploitation.⁴² Native American tribes in the County include Coquille Indian Tribe, Confederated Tribes of Siletz Indians, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

Natural Hazards: There are several types of natural hazards that can impact Coos County, including coastal erosion, wind storms, floods, landslides, earthquakes, tsunamis, droughts, and wildfires. Coos County has experienced notable coastal erosion over the years, which is accelerated during winter months when storms increase the rate of erosion. Winter storms also cause wind storm damage to buildings, utilities, and transportation systems in the county particularly in open areas and tree-lined roads. Riverine flooding is a threat to the County, especially in the winter due to heavy rain that results in extensive flooding of the lower Coquille River Valley. Increased rainfall can also lead to landslides. While earthquakes have not been an issue in the past, Coos County is susceptible to them because of its proximity to the Cascadia Subduction Zone. An earthquake could potentially lead to major landslides and tsunamis. Despite its temperate climate, droughts are not uncommon in Coos County and can be devastating for the agriculture and recreational sectors. Several destructive wildfires in Coos County during the past century have resulted in millions of dollars in damage.⁴³

³⁷ *SDAT Coos County*, *supra* note 33 at 39.

³⁸ Port of Bandon, *Welcome to the Port of Bandon Website*, <http://www.portofbandon.com/> (last visited Nov. 1, 2013).

³⁹ *SDAT Coos County*, *supra* note 33 at 88; *Coos County Mitigation Plan*, *supra* note 24 at 2-13.

⁴⁰ *SDAT Coos County*, *supra* note 33 at 87.

⁴¹ Coos Bay Rail Link, <http://www.coosbayraillink.com/> (last visited Nov. 1, 2013).

⁴² Oregon Secretary of State, State Archives, *Oregon Historical County Records Guide, Coos County History*, <http://arcweb.sos.state.or.us/pages/records/local/county/coos/hist.html> (last visited Nov. 1, 2013).

⁴³ *Coos County Mitigation Plan*, *supra* note 24 at 2-27 and 2-28.

B. Environmental Consequences

1. Known, Direct Consequence of the Proposed Action

The only direct consequence of OCRM's approval is the recognition that the Coos County Plan and Ordinance are incorporated into the OCMP with certain provisions recognized as enforceable policies of the OCMP. Once recognized as enforceable policies for CZMA federal consistency review purposes, the State has the authority to review federal actions that may have reasonably foreseeable effects on coastal resources and uses to determine whether they are consistent with the enforceable policies approved as part of the program change.

Any application of the approved enforceable policies would be an indirect effect (discussed below) since the application of an enforceable policy is contingent upon a federal action being proposed to be undertaken.

OCRM's approval of the incorporation of the Coos County Plan and Ordinance into the OCMP would not affect the application of the Plan or Ordinance themselves as those provisions already apply under local and state law regardless of whether OCRM approves or denies them. There are no known, direct effects that such incorporation would have on the human environment since application of the enforceable policies and resulting effects will depend on the type of federal action proposed in the future.

2. Potential, Indirect Consequences of the Proposed Action

Indirect consequences, if any, from OCRM's approval of the proposed RPC would be limited to a subset of activities within the County involving future federal actions. The outcome of the State's application of these policies through the CZMA federal consistency review process will vary with the particular circumstances of the actions reviewed. Under the CZMA, there are four types of federal actions: Federal agency activities,⁴⁴ federal license or permit activities,⁴⁵ outer continental shelf plans, and federal assistance to state and local governments.⁴⁶ The purpose of federal consistency is to facilitate cooperation and coordination between state and federal agencies to identify and resolve potential federal-state conflicts. There is no predetermined outcome to the CZMA federal consistency review process. Even if a state objects to an activity because it is inconsistent with an enforceable policy, an objection is not determinative of the final outcome of a proposed activity. A federal agency may proceed over a state objection if the agency finds that the proposed activity is consistent to the maximum extent practicable with the state's enforceable policy.⁴⁷

⁴⁴ Examples of federal agency activities include: fisheries plans developed by the National Marine Fisheries Service, Naval exercises, U.S. Army Corps of Engineers (Corps) beach renourishment projects, an OCS oil and gas lease sale by the Bureau of Ocean Energy Management, and activities in National Parks such as installation of mooring buoys or road construction.

⁴⁵ Examples of federal license or permit activities include: activities requiring Corps 404 permits, Corps permits for use of ocean dump sites, and Nuclear Regulatory Commission licenses for nuclear power plants or hydroelectric facilities.

⁴⁶ Examples of federal assistance to state and local governments include: Federal Highway Administration funds to coastal state and local governments, construction grants for wastewater treatment works, hazardous waste management trust funds, and Housing and Urban Development grants.

⁴⁷ See 15 C.F.R. § 930.43(d)(1).

A federal license or permit applicant may appeal the state's objection to the U.S. Secretary of Commerce.⁴⁸ The Secretary may override the state's objection if the activity is necessary in the interest of national security or is consistent with the objectives or purposes of the CZMA, which include national interest considerations. The Secretary may override a state's objection if the activity furthers the national interest in a significant or substantial matter; the national interest outweighs any adverse coastal effects; and there is no reasonable alternative that would allow the activity to be consistent with the management program's enforceable policies.⁴⁹ The outcome of the Secretary's review is case-specific.

3. *Potential, Cumulative Consequences of the Proposed Action*

There are no known or anticipated cumulative impacts that would result from OCRM's approval. Since the Coos County Plan and Ordinance are legally applicable as state and local law requirements independent of the CZMA, impacts from OCRM's decision are limited to application of these policies for federal consistency review purposes.

a. Biological, Physical, and Chemical Consequences

The Coos County Plan and Ordinance were developed pursuant to statewide planning goals and guidelines. As noted in Part I(B), the Plan and Ordinance address many goals relating to: land use and community development; agricultural land; forest land; mineral and aggregate resources; fish and wildlife habitat; historical, cultural and archaeological resources, natural areas and wildernesses; dunes, and ocean and coastal lake shorelands; natural hazards; public facilities and services; urbanization; estuary policies; and zoning. The incorporation of the Coos County Plan and Ordinance into the OCMP ensures that these goals will be considered by federal agencies. While proposed federal agency actions, if undertaken, are required to be consistent with state enforceable policies to the maximum extent practicable, states cannot direct federal agencies to take specific actions.

Although the Coos County Plan and Ordinance may further public health and safety, these laws are already legally applicable in Coos County regardless of their incorporation into the OCMP. By incorporating the proposed changes to the Plan and Ordinance into the OCMP, federal actions that otherwise might not have had to be consistent with the local enforceable policies may have to be either fully consistent or consistent to the maximum extent practicable, depending on the type of federal action. As such, approval of the RPC is not anticipated to affect public health and safety since incorporating the proposed changes into the OCMP would, if anything, extend the State's reach in applying the enforceable policies to federal actions. As noted above, the Secretary may override a state's federal consistency objection if the activity is necessary in the interest of national security or is consistent with the objectives or purposes of the CZMA. Under the CZMA, coastal management program contents must provide for, among other things, administrative coordination for public health and safety.⁵⁰ In addition, the proposed incorporation of the Coos County Plan and Ordinance into the OCMP would not apply to the

⁴⁸ See 15 C.F.R. part 930, subpart H.

⁴⁹ See 15 C.F.R. § 930.121.

⁵⁰ 16 U.S.C. § 1455b

unique characteristics of the geographic area involved in any manner different from state and local requirements already in effect.

b. Social and Economic Consequences

Under the Oregon Land Use Act of 1973, local government comprehensive plans, zoning ordinances and standards are intended to serve a variety of broad social and economic goals. Over the forty years since the Act was enacted, continued public support for the Act, as seen with its longevity, confirms that the Act is seen as meeting its intended social and economic goals. The statewide planning goals include: citizen involvement; land use planning; agricultural lands; forest lands; natural resources, scenic and historic areas, and open spaces; air, water and land resources quality; areas subject to natural hazards; recreational needs, economic development, housing; public facilities and services; transportation; energy conservation; urbanization; the Willamette River Greenway; estuarine resources; coastal shorelands; beaches and dunes; and ocean resources.

Neither the approval by OCRM of state enforceable policies nor a state's CZMA objection based on those policies is the final determination of national interest under the CZMA. The Secretary of Commerce is the ultimate arbiter of deciding the national interest under the CZMA. As noted above, the Secretary of Commerce may override a state's objection regardless of the merits of the objection.

4. Consequences of Alternatives

Alternatives one (Deny the Coos County Plan and Ordinance Changes as an RPC and Advise the State to Resubmit the Changes as an Amendment) and three (No Action) would ultimately result in approval of the proposed changes. Therefore, these alternatives would have the same consequences as the proposed action discussed above, although the timing of approval could vary. Delay itself only would affect the State's ability to review for federal consistency under the CZMA but the State may nevertheless have review authority under State law depending on the type of proposed federal action.

Alternative two (Deny the Coos County Plan and Ordinance Changes) would result in different consequences, but the ultimate consequences are uncertain. The direct consequence of this alternative is that the State could not use the proposed changes for federal consistency. The State would still have federal consistency authority and could object to an activity if it is inconsistent with other policies. Thus, any additional consequences would be activity-specific and are uncertain at this time. In order to deny the proposed changes, OCRM would need to determine that the changes would affect the underlying approvability of the OCMP.

5. Conclusion

For the reasons described above, OCRM's approval of the proposed changes to the OCMP is not anticipated to result in a significant effect on the human environment.

V. Other Environmental and Administrative Review Requirements

Anadromous Fish Conservation Act

The Anadromous Fish Conservation Act (16 U.S.C. § 757a, *et seq.*) provides authority to conserve, develop, and enhance anadromous fishery resources.

Compliance: There are no compliance requirements for the Anadromous Fish Conservation Act.

Clean Air Act

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) directs the U.S. Environmental Protection Agency to set limits on air emissions to ensure basic protection of health and the environment. The fundamental goal is the nationwide attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). Primary NAAQS are designed to protect human health. Secondary NAAQS are designed to protect the public welfare (for example, to prevent damage to soils, crops, vegetation, water, visibility, and property).

Compliance: The State of Oregon has been delegated authority to administer the Clean Air Act. The State “acknowledgement,” i.e., approval of the Coos County Plan, serves as a finding that the plan complies with Clean Air Act requirements.

Clean Water Act

The Clean Water Act (33 U.S.C. § 1251, *et seq.*) is the principal law governing pollution control and water quality of the nation’s waterways. Section 404 of the Act authorizes a permit program for the beneficial use of dredged or fill material in navigable waters. The U.S. Army Corps of Engineers (USACE) administers the program.

Compliance: The State of Oregon has been delegated authority to administer the Clean Water Act. The State “acknowledgement,” i.e., approval of the Coos County Plan, serves as a finding that the plan complies with Clean Water Act requirements.

Coastal Zone Management Act (CZMA)

The goal of the federal Coastal Zone Management Act (16 U.S.C. § 1451, *et seq.*; 15 C.F.R. part 923) is to preserve, protect, develop and, where possible, restore and enhance the nation’s coastal resources. The federal government provides grants to states with federally-approved coastal management programs. The State of Oregon has a federally-approved program. Section 1456 of the CZMA requires any federal action inside or outside of the coastal zone that affects any land or water use or natural resources of the coastal zone to be consistent, to the maximum extent practicable, with the enforceable policies of approved state management programs. It states that no federal license or permit may be granted without giving the State the opportunity to concur that the project is consistent with the State’s coastal policies. The regulations outline the consistency procedures.

Compliance: The proposed action, approval of the Coos County program changes as an RPC, would enable Oregon to use the revised enforceable policies for CZMA federal consistency reviews for federal actions proposed or filed with an authorizing federal agency after OCRM’s approval. If OCRM determined that the changes must be approved through the amendment process, the result would likely be the same as that under the proposed action, i.e., approval (although the timing of OCRM’s decision would be different). If the proposed program change would cause the Oregon Coastal Management Program to no longer meet the eligibility requirements for program approval under the CZMA, OCRM must deny the program change. Regardless of whether the program change is approved or denied, the Coos County Plan and

Ordinance would still have effect under local and state law. Also, any policy which had previously been approved by OCRM and shown not to have been substantially revised would still be applicable for CZMA federal consistency review purposes.

Coastal Barrier Resources Act (CBRA)

Originally passed in 1982 and reauthorized in 2005 (16 U.S.C. § 3501 *et seq.*; 12 U.S.C. § 1441 *et seq.*), CBRA was enacted to protect coastal barrier islands and their resources. Under CBRA, there are limitations on federal expenditures in designated CBRA units; however, there are certain project-specific allowances on a project-by-project basis.

Compliance: There are no CBRA units in the State of Oregon.

Endangered Species Act

The federal Endangered Species Act (16 U.S.C. § 1531, *et seq.*; 50 C.F.R. parts 17, 222, 224) directs all federal agencies to conserve endangered and threatened species and their habitats and encourages such agencies to use their authority to further these purposes. Under the Act, NOAA's National Marine Fisheries Service and the U.S. Fish and Wildlife Service (USFWS) publish lists of endangered and threatened species. Section 7 of the Act requires that federal agencies consult with these two agencies to minimize the effects of federal actions on endangered and threatened species.

Compliance: OCRM determined that "no effect" to endangered species is appropriate for this action so formal consultation under section 7 was not required.

Estuaries Protection Act

The Estuary Protection Act (16 U.S.C. §§ 1221-1226) highlights the values of estuaries and the need to conserve natural resources. It authorizes the Secretary of the Interior, in cooperation with other federal agencies and the states, to study and inventory estuaries of the United States, to determine whether such areas should be acquired by the federal government for protection, to assess impacts of commercial and industrial developments on estuaries, to enter into cost-sharing agreements with states and subdivisions for permanent management of estuarine areas in their possession, and to encourage state and local governments to consider the importance of estuaries in their planning activities related to federal natural resource grants.

Compliance: There are no compliance requirements for the Estuaries Protection Act.

Fish and Wildlife Conservation Act

The Fish and Wildlife Conservation Act of 1980 (16 U.S.C. § 2901; 50 C.F.R. § 83) provides for the consideration of impacts on wetlands, protected habitats, and fisheries.

Compliance: There are no compliance requirements for the Fish and Wildlife Conservation Act.

Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. § 1801, *et seq.*) as amended and reauthorized by the Sustainable Fisheries Act (Public Law 104297), established a program to promote the protection of essential fish habitat (EFH) in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After EFH has been described and identified in fishery management plans by the regional fishery management councils, federal agencies are obligated to consult with the Secretary of the U.S. Department of Commerce with respect to any action authorized, funded, or undertaken or proposed to be authorized, funded, or undertaken, by such

agency that may adversely affect any EFH.

Compliance: Waterbodies within Coos County have been designated as essential fish habitat pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Under the MSFCMA, an EFH consultation with the National Marine Fisheries Service would be required for any federal action being proposed in the County.

Marine Mammal Protection Act

The Marine Mammal Protection Act (16 U.S.C. § 1361, *et seq.*) establishes a moratorium on the taking and importation of marine mammals and marine mammal products, with exceptions for scientific research, allowable incidental taking, subsistence activities by Alaskan natives, and hardship. The Act provides authority to manage and protect marine mammals, including maintenance of the ecosystem.

Compliance: “No take” authorization is not required for the proposed action or any of the alternatives.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (16 U.S.C. § 715, *et seq.*) provides for the protection of migratory birds. The Act does not specifically protect the habitat of these birds but may be used to consider time of year restrictions for remedial activities on sites where it is likely migratory birds may be nesting and/or to stipulate maintenance schedules that would avoid the nesting seasons of migratory birds.

Compliance: The proposed action and alternatives do not trigger any requirement under the Migratory Bird Treaty Act.

National Historic Preservation Act

The purpose of the National Historic Preservation Act (16 U.S.C. § 470, *et seq.*) is to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes by specifically providing for the preservation of historical or archeological data which might otherwise be lost or destroyed.

Compliance: NOAA initiated NHPA Section 106 consultation with a “Finding of No Adverse Effect” determination. After discussing the routine program change program broadly, and the Oregon request specifically, the SHPO responded that they had no comment on the RPC for Coos County because it is an administrative action. They acknowledged that future projects would be reviewed by their office on a project-by-project basis. No further action is required by NOAA.

Rivers and Harbors Act

The Federal Rivers and Harbors Act (33 U.S.C. § 401, *et seq.*) regulates development and use of the nation’s navigable waterways. Section 10 of the Act prohibits unauthorized obstruction or alteration of navigable waters and vests the USACE with authority to regulate discharges of fill and other materials into such waters.

Compliance: Compliance with the Rivers and Harbors Act would be required for any federal action being proposed in navigable waters, or tributaries thereof, within Coos County.

Executive Order 11990 Protection of Wetlands

Executive Order 11990 (40 C.F.R. § 6392 (a) and Appendix A) requires federal agencies to avoid the adverse impacts associated with the destruction or loss of wetlands, to avoid new

construction in wetlands if alternatives exist, and to develop mitigation measures if adverse impacts are unavoidable.

Compliance: There are no compliance issues with Executive Order (EO) 11990 as the EO only applies to federal agencies activities.

Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 12948; Amendment to Executive Order No. 12898

Executive Orders 12898 and 12948 require each federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations.

Compliance: There are no compliance issues with Executive Orders (EO) 12898 and 12948 as those EOs only apply to Federal agencies activities.

Executive Order Number 13112 Invasive Species

The purpose of Executive Order 13112 is to prevent the introduction of invasive species and provide for their control, and to minimize the economic, ecological, and human health impacts that invasive species cause.

Compliance: There are no compliance issues with Executive Order (EO) 13112 as the EO only applies to Federal agencies activities.

VI. Conclusion: Finding of No Significant Impact

The National Oceanic and Atmospheric Administration proposes to approve the incorporation of the Coos County Plan and Ordinance into the Oregon Coastal Management Program as an RPC. In addition to the proposed action to approve the program changes as an RPC, three alternatives were considered: deny the program change as an RPC and advise the State to resubmit the changes as an amendment, deny the program change, or take no action.

Significant individual and/or cumulative environmental effects would not result from implementation of the proposed action, and preparation of a Finding of No Significant Impact (FONSI) is warranted. NOAA Administrative Order (NAO) 216-6 (revised June 20, 1999) provides eleven criteria for determining the significance of the impacts of a proposed action. These criteria are discussed below as they relate to the proposed project.

a. Has the agency considered both beneficial and adverse effects (A significant effect may exist even if the Federal agency believes on balance the effect will be beneficial)?

The agency has considered both beneficial and adverse effects and no significant effects are anticipated. The only direct effect is that the updated and revised Coos County Plan and Ordinance would be incorporated into the OCMP and could be used by the State in determining whether to concur or object to a proposed federal action. Furthering cooperation and coordination between federal agencies and states is an express purpose of the CZMA and considered to be a beneficial effect. The proposed action is a further detailing of the OCMP which has already been approved by OCRM and is being implemented through policies found at the state and local level. As such, the proposed action to approve the incorporation of the Coos County Plan and Ordinance is not considered to be a significant effect.

OCRM finds no indirect or cumulative effects associated with the proposed activity because the Coos County Plan and Ordinance are legally applicable as state and local law requirements independent of the CZMA. The outcome of the State's application of these policies through the CZMA federal consistency review process will vary with the particular circumstances of the activities reviewed.

b. To what degree would the proposed action affect public health and safety?

Because the Coos County Plan and Ordinance are already legally enforceable as state and local law requirements independent of the CZMA, the proposed action is not anticipated to change how the Plan and Ordinance affect public health and safety.

c. To what degree would the proposed action affect unique characteristics of the geographic area in which the proposed action is to take place?

The unique characteristics of the geographic areas are already subject to the legal protections afforded by state law and the Coos County Plan and Ordinance. The incorporation of the Plan and Ordinance would not affect these areas in any way different from how those elements are already being applied under state and local law.

d. To what degree would the proposed action have effects on the human environment that are likely to be highly controversial?

The proposed program change is to incorporate into the OCMP the Coos County Plan and Ordinance, which have already been approved by the State and taken effect within Oregon. These laws have been adopted through the local legislative and state review processes. Any controversy regarding these laws would be in regards to their application which, again, would be independent of the state CZMA review process.

e. What is the degree to which effects are highly uncertain or involve unique or unknown risks?

The direct effect of the action is certain and known. As a result of the proposed action, the State can apply the enforceable policies identified in the program change during its federal consistency review of federal actions that have reasonably foreseeable effects on any coastal use or resource. The outcome of the State's application of these policies through the CZMA federal consistency review process will vary with the particular circumstances of the activities reviewed.

OCRM finds no indirect or cumulative effects associated with the proposed activity because the Coos County Plan and Ordinance are legally applicable as state and local law requirements independent of the CZMA.

f. What is the degree to which the action establishes a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

The action is consistent with similar past actions. As previously stated, the Coos County Plan and Ordinance were originally approved for incorporation in the OCMP in 1991 through an RPC. Although the proposed action could influence similar future actions and decisions, it does

not establish a new or controlling precedent. Similar future actions will still be subject to an independent review.

g. Does the proposed action have individually insignificant but cumulatively significant impacts?

The proposed action does not involve actions which have individually insignificant but cumulatively significant impacts (*See IV. B*). OCRM finds no indirect or cumulative effects associated with the proposed activity because the Coos County Plan and Ordinance are legally applicable as state and local law requirements independent of the CZMA.

h. What is the degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources?

NOAA determined that the proposed action would have no adverse effects on historic properties, and submitted this finding to the Oregon State Historic Preservation Office (SHPO). The SHPO had no comment on the proposed action, as it is an administrative action and any projects affecting the coast would be reviewed by their office on a project-by-project basis.

i. What is the degree to which endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, are adversely affected?

Endangered and threatened species and their critical habitat would not be adversely affected by the proposed action. OCRM determined that the proposed administrative action will have “no effect” on listed species or designated critical habitat, and no formal consultation is required.

j. Does the proposed action have a potential to violate Federal, state, or local law for environmental protection?

No. The proposed action is in compliance with all of the federal statutes noted in Section V of the EA. The proposed action has been reviewed at the state and local level and it does not have a potential to violate state or local law for environmental protection.

k. Will the proposed action result in the introduction or spread of a nonindigenous species?

No. The proposed action is a purely administrative action that will not result in the introduction or spread of nonindigenous species.

not establish a new or controlling precedent. Similar future actions will still be subject to an independent review.

g. Does the proposed action have individually insignificant but cumulatively significant impacts?

The proposed action does not involve actions which have individually insignificant but cumulatively significant impacts (See IV. B). OCRM finds no indirect or cumulative effects associated with the proposed activity because the Coos County Plan and Ordinance are legally applicable as state and local law requirements independent of the CZMA.

h. What is the degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources?

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j. Does the proposed action have a potential to violate Federal, state, or local law for environmental protection?

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k. Will the proposed action result in the introduction or spread of a nonindigenous species?

No. The proposed action is a purely administrative action that will not result in the introduction or spread of nonindigenous species.

Finding of No Significant Impact (FONSI) for the Approval of a Routine Program Change to Incorporate the Revised Coos County Comprehensive Plan and the Coos County Zoning and Land Development Ordinance into the Oregon Coastal Management Program.

NOAA has prepared the attached Environmental Assessment (EA) for the Coastal Zone Management Program, which conforms to the procedural and technical requirements set forth in NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act, and NEPA. The proposed action is to approve the incorporation of program changes to the Oregon Coastal Management Program as an RPC. Having reviewed the EA, I have determined that the approval assessed within will not have a significant impact on the quality of the human environment. Therefore, the preparation of an Environmental Impact Statement for the proposed action is not required by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

for


30 Jan 2014

Holly A. Bamford, Ph.D.
Assistant Administrator for
Ocean Services and Coastal Zone Management

Date

Appendix A: List of Preparers and Persons Consulted

The following persons participated in the development of this EA:

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Appendix B: Response to Comments

No comments were received on Oregon's Coos County program change submission. Therefore, there was no public comment period for the corresponding Draft Environmental Assessment.